Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-737

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

PINNEY DOCK & TRANSPORT COMPANY,
LITTON INDUSTRIES, INC.,
LITTON SYSTEMS, INC.,
LITTON GREAT LAKES CORPORATION
and ERIE MARINE, INC.,
Petitioners

v.

THE PENN CENTRAL CORPORATION,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

Respondent misrepresents the issues raised by petitioners and mischaracterizes the record in this case. Respondent contends that a writ of certiorari should not be granted because the courts below did not find fraudulent concealment by the Penn Central bankruptcy trustees. Petitioners do not claim fraudulent concealment by the trustees. Petitioners maintain that respondent fraudulently concealed the antitrust conspiracy, and accept that the trustees, like petitioners, were victims of respondent's fraud. That the trustees properly discharged

their duties and did not know of respondent's fraudulent concealment does not alter the fact that petitioners were entitled to constitutionally adequate notice, and a discharge of petitioners' claims without such notice violates due process.

The courts below did not find, as respondent maintains, that petitioners failed to prove fraudulent concealment.* On the contrary, both courts assumed that petitioners "neither knew nor had reason to know of their antitrust claims because of the alleged conspiracy. . . ." (Pet. App. at 54a. *See id.* at 20a and 46a).

Petitioners are entitled to rely on the assumption upon which the decisions below were based. Given petitioners' lack of knowledge, by reason of respondent's fraudulent concealment, a standard proof of claim form was not constitutionally adequate notice of petitioners' antitrust claims. The purported discharge of petitioners' antitrust claims, under these circumstances, deprives petitioners of a significant property right without due process.

Respondent also implies that a writ should not be granted because Section 77(f) of the Bankruptcy Act has been repealed. Respondent fails to point out that it has been replaced by an analogous provision of the Bankruptcy Code. (*See* 11 U.S.C. § 1141 (1982)). Further, the status of section 77(f) does not change the basic due process question here, a question that transcends the particular statutory provision involved, and is applicable to any bankruptcy discharge.

The decisions below permit a debtor to conceal critical information from courts, trustees and creditors. If such a precedent is permitted to stand, bankruptcy proceedings would be subverted to serve the ends of fraudulent debtors; meaningful participation by trustees and creditors

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* All of respondent's record citations are directed to its issue of the absence of fraud by the trustees.

alike would be precluded; and the due process rights of creditors would be violated. If the decision of the Third Circuit is not reversed, the architect of the antitrust conspiracy involved in this litigation will profit forever from the fraudulent concealment of its illegal activity.

CONCLUSION

For the reasons stated herein and in the Petition for Writ of Certiorari, Pinney and Litton respectfully request this Court to issue a writ of certiorari to review the decision of the Court of Appeals for the Third Circuit.

Respectfully submitted,

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